

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NINOTCHKA MANUS,

Plaintiff,

-against-

MAX PINCIONE,

Defendant.

23-CV-6149 (JGLC)

ORDER

JESSICA G. L. CLARKE, United States District Judge:

For the reasons stated on the record at the December 12, 2024 conference before this Court, Plaintiff's motion to dismiss defendant's second counterclaim for fraud (ECF No. 49) is GRANTED. The Court also denies, *sua sponte*, any leave for Defendant to amend the second counterclaim for fraud, as any amendment would be futile. Plaintiff also appeared to move, for the first time on reply, to dismiss Defendant's breach of contract counterclaim. Because that argument was improperly raised, the Court DENIES that request and that counterclaim still remains.

With respect to the pending preliminary injunction motion (ECF No. 67), counsel for Defendant is to confer with Mr. Pincione and confirm whether he will agree to preserve the funds received from the sale of the ring at issue in this litigation. Should Defendant so agree, the parties are ORDERED to submit, by **December 16, 2024**, a proposed order for the Court's review. If Defendant does not agree to preserve the funds—or if the parties are otherwise unable to resolve this issue—the parties are ORDERED to file a letter by **December 16, 2024** notifying the Court no agreement was reached, and then to engage in discovery regarding Defendant's sale of the ring. All discovery shall be produced by **December 20, 2024**. Defendant is directed to provide an accounting of the sale which includes the following information: (i) who the ring was

sold to; (ii) the amount of the sale; (iii) where funds from the sale are currently located; and (iv) if any of the funds were disbursed, and, if so, when. Plaintiff may supplement the preliminary injunction motion based on this discovery.

The parties shall file a letter by **December 16, 2024** providing their availability for a trial in March, April, or May 2025, and their estimations for the length of any such trial.

Lastly, the deadline in the Case Management Plan for amended pleadings (Para. 6 in ECF No. 65) is extended to **January 17, 2025**.

The Clerk of Court is respectfully directed to terminate ECF No. 49.

Dated: December 13, 2024
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Jessica Clarke". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

JESSICA G. L. CLARKE
United States District Judge